IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.147 OF 2007

John D'Souza,
Age -34 years, Occ: Service,
residing at 341, Room No.2728,
Motilal Nagar No.2, Bangur Nagar,
Goregaon (W),
Mumbai-400 090.
(At present detained in Central
Prison, Mumbai). .. **Petitioner.**

Vs

1. Assistant Commissioner of Police,
B-1/Special, DCB, CID, Mumbai.

2. Joint Commissioner of Police (Crime)
Crime Branch, CID, Mumbai.

3. Commissioner of Police,
Brihanmumbai.

4. The State of Maharashtra. .. **Respondents**

Mr M.S.Mohite, for the petitioner.
Mr S.R.Borulkar, Public Prosecutor for the respondents.

CORAM : SMT.RANJANA DESAI & D.B.BHOSALE,JJ.
DATED : 30th APRIL, 2007

ORAL JUDGMENT : (Per D.B.Bhosale, J.)

1. This writ petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") raises the following questions:-

(i) Whether it is necessary that a separate information under section 23(1)(a) of Maharashtra Control of Organised Crime Act, 1999 ("for short,"MCOCA"), should be recorded after the approval is accorded under this section even

in cases where the crime had already been registered after recording the FIR under section 154 of the Code for the offences under the Indian Penal Code?

(ii) Whether a police officer, other than the officer mentioned in section 23(1)(a) of MCOCA, has power to club two or more similar offences together, having been committed by the very same organised crime syndicate before the sanction under section 23(2) is accorded, without seeking a fresh approval in respect thereof and the police officer mentioned in sub-section 23(1)(b) can proceed to investigate them as a single offence?

(iii) Whether the sanction accorded under section 23(2) of MCOCA would be rendered invalid on the ground that the prior approval under section 23(1)(a) was not obtained for recording an information about an offence registered earlier bearing DCB, CID No.87/2005, which is clubbed with the offence bearing DCB, CID NO.86/2005 for which the approval had been granted?

2. The writ petition raising the aforesaid

questions is filed by the sole petitioner seeking to quash the proceedings against him in MCOC Special Case No.25/2005 on the file of the Special Court-II for Greater Bombay at Sewree.

3. The background facts, sans unnecessary details, are as follows. An offence vide C.R.No.128/2005 was registered at Dr.D.B.Marg Police Station under section 387 read with 34 of Indian Penal Code on the allegations that during the period between 31/5/2005 and 6/7/2005 the co-accused Vikki Malhotra and Farid Ahmed claiming to be working for Chhota Rajan were threatening the informant and trying to extort money to the tune of Rs. one crore. On the very same day, another FIR vide C.R.No.No.195/2005 was registered at L.T.Marg Police Station under section 387 read with 34 of IPC making the similar allegations by another informant, who was also threatened by the very same accused for extortion money of Rs.Fifty lacs. The investigation of both these offences was transferred to DCB, CID and they were registered afresh as C.R.Nos.86/2005 and 87/2005. The petitioner also came to be arrested in connection with these offences.

4. A proposal was submitted by a Senior Inspector of Police DCB, CID, CIU, Mumbai, to the Joint Commissioner of Police (Crime), Crime Branch, CID,

Mumbai, respondent no.2 in the petition, for seeking the prior approval under section 23(1)(a) of MCOCA for recording an information about the offence registered earlier bearing DCB, CID No.86/2005. Respondent no.2, on 25.7.2005, granted the approval and directed the Assistant Commissioner of Police, B-1/Spl, DCB, CID, Mumbai, respondent no.1 herein, to investigate into the offence bearing C.R.No.86/2005. After the investigation was completed a proposal for sanction dated 11.10.2005 along with a report of the Joint Commissioner of Police dated 15.10.2005 and the papers of investigation in DCB, CID, C.R.Nos 86/2005 and 87/2005 were presented to the Commissioner of Police, Brihanmumbai, respondent no.3 in the petition, for sanction as required under section 23(2) of MCOCA. On 18.10.2005, respondent no.3 accorded the sanction to prosecute the petitioner and the co-accused. The petitioner had filed a bail application before the Special Court-II, which came to be rejected vide order dated 14.11.2006. It is against this backdrop, the petitioner has approached this Court by way of the instant writ petition seeking to quash the Special Case no.25/2005. The State has opposed the prayer by filing reply affidavit dated 29.3.2007.

5. We heard the learned counsel for the parties at length. With their assistance, we perused all the relevant documents placed before us as also the

judgments cited by them in support of their submissions. Mr Mohite, learned counsel for the petitioner on the first question formulated by us in the first paragraph of the judgment, strenuously urged that the provisions of section 23 of MCOCA, which are mandatory in nature, were given complete go-by by the investigating agency. Section 23(1)(a) mandates that no information about the commission of an offence of organised crime under MCOCA could be recorded by a police officer without the prior approval of a competent police officer. He submitted that in the present case no separate FIR was recorded about the commission of an offence under MCOCA after the approval was granted under section 23(1)(a) of the said Act and the investigation was carried out on the basis of the FIR recorded by D.B.Marg Police Station being C.R.No.128 of 2005. The FIR, which was lodged under the IPC on 11.7.2005, according to Mr Mohite, cannot take place of the "information", which is required to be recorded after the approval was obtained. He further submitted that if it is to be held that the information mentioned in section 23(1)(a) could also mean the FIR recorded under section 154 of the Code before the approval is obtained, then the specific words in section 23(1)(a) about the non-obstante clause and about obtaining approval prior to recording the information would have no meaning. He further submitted that the expression "prior approval" used in section 23(1)(a)

means the approval should precede the recording of information under MCOCA.

6. On the other hand, Mr Borulkar, learned Public Prosecutor, submitted that the expression "shall be recorded" in Section 23(1)(a) of MCOCA will have to be read to mean "shall be registered". He submitted that in the cases where the offence has already been registered under section 154 of the Code for the offence under the IPC, recording of second FIR is not necessary and the only formality which the investigating agency requires to complete under section 23(1)(a) is to "register" offence under MCOCA after the approval is granted by the competent police officer. He submitted that in criminal jurisprudence a concept of second FIR is not recognised and, therefore, the submission that separate FIR is necessary to be recorded after the approval under section 23(1)(a) is not sustainable in law. He then submitted that the word "information" in section 23(1)(a) will have to be read to mean FIR under section 154 of the Code, as contemplated by section 2(2) of MCOCA. He submitted, the only requirement of law is to "register" the offence under MCOCA after the approval contemplated under section 23(a) is granted. Both the learned counsel for the parties placed reliance upon judgments of the Supreme Court as also of this Court, including the judgment of the Full Bench, to which we

will make reference to at an appropriate stage.

7. The arguments advanced by the learned counsel for the parties in the instant writ petition are centered around section 23 of MCOCA. This section deals with cognizance of, and investigation into, an offence. It would be advantageous to reproduce the section which reads thus:

> "23. Cognizance of, and investigation into, an offence -- (1) Notwithstanding anything contained in the Code, ---
>
> (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;
>
> (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.
>
> (2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police."

8. The provisions of Section 23 of MCOCA fell for the consideration of the Full Bench of this court in **Ashok Gyanchand Vohra and ors Vs. State of Maharashtra and Anr, 2006 All MR (Cri) 740**, to which one of us (D.B.Bhosale, J.) was party. After considering the scheme of the said section the Full Bench observed that

a bare perusal of section 23 makes it explicitly clear that it provides threefold protections/safeguards before the Special Court takes cognizance of any offence under MCOCA, namely, (i) "prior approval" for recording and/or registration of an "information"; (ii) investigation by a competent police officer under section 23(1)(b); and (iii) "prior sanction" by a police officer not below the rank of Addl.Director General of Police, that is, the Commissioner of Police in the city of Mumbai for taking cognizance of an offence under MCOCA.

9. It is clear that granting "prior approval" is an act which the officer competent under section 23(1)(a) has to perform whereas carrying out an investigation is an act which the competent officer under section 23(1)(b) has to perform. Without prior approval further acts contemplated under section 23(2) cannot be performed. Similarly, sanction contemplated in sub-section (2) of section 23 is a condition precedent for prosecuting a particular person for the offence under MCOCA. The sanction is not granted to the Special Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the court concerned for enabling it to take cognizance of the offence and to proceed to trial. Thus a valid sanction is sine-qua-non for enabling the prosecuting agency to approach the Court in order to enable the court to take

cognizance of the offence under MCOCA as disclosed in the report. The corollary is that, if there is no valid sanction the Special Court gets no jurisdiction to try a case against any person mentioned in the report as the Court is forbidden from taking cognizance of the offence without such sanction. It is thus clear that every act in this section depends upon the other and even if one act is not performed, as provided for in this section, the court would not have jurisdiction to take cognizance, and any proceeding adopted thereunder would also be without jurisdiction and would vitiate the trial. We have to, therefore, see in the present case, whether all the three acts have been performed in the manner aforestated and the sanction is valid or not.

10. There are two categories of the cases wherein the provisions of MCOCA could be invoked, the first being the cases where an offence has already been registered after recording FIR, disclosing cognizable offence under ordinary law, and other being the cases where a police officer even before registering an offence under IPC, straightway, seeks approval for registering an offence under MCOCA and records FIR. In the present case, we are concerned with the first category. We are informed by Mr Borulkar, the learned Public Prosecutor, and which has not been controverted by Mr Mohite, learned counsel for the petitioner, that

most of the cases, where the provisions of MCOCA have been invoked so far, fall in the first category and in these cases the investigating officers under section 23(1)(b) did not record separate FIR after the approval under section 23(1)(a) had been granted and carried out investigations on the basis of the FIR recorded earlier. For instance, Mr Borulkar stated that even in Telgi Scam, initially an offence was registered under the IPC and after the approval under section 23(1)(a) further investigation was carried out by the competent investigating officer/agency, after registering the offence under MCOCA based on the FIR recorded earlier. It is thus clear that in practice also the investigating agencies do not record separate "information" in such cases about the commission of an organised crime under MCOCA after the approval is granted by the competent police officer under section 23(1)(a).

11. The question that was referred to the Full Bench in **Ashok Gyanchand Vohra's case** (supra) was "whether in a private complaint filed under the provisions of section 9(1) of MCOCA, the Designated Court is empowered to order investigation under section 156(3) of the Code before the approval/sanction is granted/accorded to investigate and take cognizance as contemplated under section 23 of the said Act". In the said judgment, in paragraph 81, this Court observed that "the word

information in section 23(1) means First Information Report contemplated by section 154 in Chapter XII of the Code inasmuch as it has not been defined in MCOCA." Thus, the meaning of the word "information" as reflected in section 154 in the Code will have to be assigned to the word "information" used in section 23(1)(a).

12. The provisions of the Code and more particularly the provisions in Chapter XII thereof deal with the procedure to be followed in case of every information in cognizable cases to the police and their powers to investigate. It starts with section 154 which deals with information in cognizable cases providing several stages for the police to follow and their powers to investigate. Under this section, an information about the cognizable offence needs to be reduced in writing by an officer in-charge of a police station. Such information is known as First Information Report (FIR) under section 154 of the Code. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, he shall reduce it to writing and then to enter the substance thereof in the prescribed format and register the case on the basis of such information. This procedure need not be followed in the cases where the approval under section 23(1)(a) is granted.

13. Section 23 starts with non obstante clause which overrides "the procedure" prescribed under the Code and mandates that police should follow the procedure contemplated under section 23. Under this provision no information about the commission of an offence of organised crime under MCOCA, as observed earlier, should be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police and no investigation of such offence should be carried out by a police officer below the rank of the Deputy Superintendent of Police and further that no court should take cognizance of such offence without the previous sanction of the police officer not below the rank of Additional Director General of Police. The non obstante clause in section 23 thus overrides the procedure laid down in the Code and more particularly Chapter XII in respect of recording an information by the police and their powers to investigate. The non obstante clause in section 23, however, does not prohibit to assign the meaning of the "words and expressions" in the Code to the words and expressions in section 23 of MCOCA. In other words, the non obstante clause in section 23, in our opinion, does not put any impediment in assigning the meaning to the words and expressions in section 23 and which have not been defined in MCOCA, as assigned in the Code. The non-obstante clause, as observed by the Division Bench

in **Altaf Ismail Shaik Vs. State of Maharashtra in 2005 Cri.L.J 3584** clearly discloses the mandate of the legislature that the cognizance of the offences under the MCOCA should not be in routine course, but only upon the facts disclosing the applicability thereof and satisfaction of the officer of the high rank. In short, the non-obstante clause employed in Section 23 of MCOCA overrides the procedure contemplated under the provisions of the Code in respect of recording of FIR, investigation, submitting a report under section 173 etc, however, it does not put any impediment in assigning the meaning to the word "information" as assigned under section 154 of the Code.

14. Section 154 of the Code deals with information in cognizable cases. Sub-section (1) of Section 154 of the Code contains four mandates to an officer in-charge of a police station. The first enjoins that every information relating to the commission of a cognizable offence, if given orally, shall be reduced to writing, and the second directs that it be read over to the informant; the third requires that every such information, whether given in writing or reduced to writing, shall be signed by the informant, and the fourth is that substance of such information shall be entered in the station house diary. We are not concerned with sub-sections (2) and (3) of Section 154

in the instant writ petition and, therefore, we avoid to make reference to these sub-sections. It would be apt to note here a further directive contained in sub-section (1) of Section 157 of the Code, which provides that immediately on receipt of the information, the officer in charge of the police station shall send a report of every cognizable offence to a Magistrate empowered to take cognizance of the offence and then to proceed to investigate and depute his subordinate officer to investigate the facts and circumstances of the case. It is thus clear that every "information" relating to commission of a cognizable offence, if given orally, shall be reduced to writing. Such "information" which is in common parlance known as "First Information Report" (FIR).

15. An information given under sub-section (1) of Section 154 of the Code, though commonly known as FIR, this term is not used in the Code. It is a very important document. It sets the criminal law in motion and marks the commencement of investigation. The Supreme Court in **T.T.Anthony Vs. State of Kerala, (2001) 6 SCC 181** had an occasion to deal with various provisions of Cr.P.C and more particularly section 154 thereof wherein the aforesaid position of law has been clearly laid down. In paragraph 20 of the judgment the Supreme court has observed that "only the earliest or

the first information in regard to the commission of a cognizable offence satisfies the requirements of section 154 of Cr.P.C." The Supreme Court has further observed that "there could be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in-charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in section 173 of the Code."

16. In the **State of Haryana and ors Vs. Bhajan Lal and Ors, AIR 1992 SC 604**, the Supreme Court while dealing with section 154 of the Code has observed that "if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such

information."

17. It is thus clear, that recording of FIR and registration of an offence, though appear to be independent acts, where latter follows the former, FIR cannot be recorded without it being registered as an offence or there cannot be registration of an offence without recording FIR. In other words, an "information" about the commission of a cognizable offence, becomes FIR within the meaning of Section 154 of the Code or even section 23(1)(a) of MCOCA, only if and when the offence is registered on the basis thereof, otherwise it would, at the most, be a statement under section 161 of the Code. These two acts, in fact, are performed simultaneously. The word "information" and the expression " shall be recorded" employed in Section 23(1)(a), thus, mean "registration of an offence" in the case where the offence had already been registered under ordinary law. In other words, the word "recorded" used in Section 23(1)(a) will also have to be read to mean "registration" of an offence. It is now well settled that there can be no second FIR. However, there could be fresh registration of the offence and in that case there could be a new number of the crime register. In the present case itself, initially the offence was registered by Dr.D.B.Marg Police Station and subsequently it was transfer to DCB, CID where it was

once again registered and different C.R.number was given by DCB, CID.

18. It is against this backdrop, the words "information" occurring in section 23(1)(a) will have to be read as "first information report" within the meaning of Section 154 of the Code and the expression "shall be recorded" in the very same section will have to be read to mean "shall be registered" by a police officer. The mandate of section 23, in our opinion, is that no information/offence about the commission of an offence of organised crime under MCOCA, shall be " recorded and/or registered" by a police officer, as the case may be, without prior approval of the police officer not below the rank of the Deputy Inspector General of Police, that is, the Joint Commissioner of Police in the city of Mumbai.

19. Even if the submission of Mr Mohite, learned counsel for the petitioner that the "information" mentioned in Section 23(1)(a) could not mean "FIR" under section 154 of the Code is accepted, looking to the scheme of section 23 and the categories of the cases wherein the provisions of section 23 could be invoked, we find no reason to take different view and hold that the word "information" and the expression "shall be recorded" employed in section 23(1)(a) would also mean

registration of the offence. The recording of "information" about the commission of an offence of organised crime under MCOCA and/or "registration of an offence" thereunder are not independent acts. "Recording of an information" and "registration of an offence" under MCOCA are the acts which cannot be permitted to be performed without "the prior approval" of the competent police officer under section 23(1)(a). Both these acts must follow each other and, therefore, they cannot be treated as independent acts. In other words, they need to be performed together only after the approval is granted by the competent police officer. Therefore, the expression "shall be recorded" occurring in section 23(1)(a) will also have to be read to mean "shall be registered" in the cases where FIR had already been recorded and registered under ordinary law. We find no reason to take a different view from the one taken by us in relation to section 154 of the Code even if the provisions of the Code are kept aside. If the expression "shall be recorded" is read only to mean "recording of an information" or "reducing an information in writing" and not "registration of an offence" it would create anomalous situation which would be unsustainable in law. There cannot be, in any case, two FIRs. There is no special format prescribed for recording information under section 23(1)(a). What is necessary is only "prior approval" of the high ranking

police officer for recording and/or registering an information/offence about the commission of an offence of organised crime. In the circumstances, this submission of Mr Mohite also deserves to be rejected.

20. The judgments relied upon by Mr Mohite, learned counsel for the petitioner, in support of his submissions, on the first question of law formulated by us in **Rambhai Nathabhai Gadhvi and ors Vs State of Gujarat, (1997) 7 Supreme Court Cases 744, State of Maharashtra and ors Vs Lalit S Nathpat and Anr in Special Leave Petition Nos 3320-21 of 2005** decided by the Supreme Court on 13.2.2007, a judgment of the Full Bench in **Ashok Gyanchand Vohra** (supra) and the judgment of the Division Bench of this Court in **Altaf Ismail Sheikh Vs. State of Maharashtra, 2005 (Cri) L.J.3584**, are of no avail to the petitioner. These judgments were relied upon by the learned counsel for the petitioner also in support of his submissions made on the other two questions formulated by us. These judgments were relied upon by Mr Mohite in support of his contentions that after the approval, no separate FIR was recorded by the investigating officer which is a mandate of section 23(1)(a) and that was not considered by the sanctioning authority while according sanction under section 23(2). Mr Mohite, submitted that the sanction in the present case is not valid and, therefore, the designated court

would not get jurisdiction to try case against the petitioner and others as the Court is forbidden from taking cognizance of the offence without such sanction. The judgments were also relied upon in support of the submission that the provisions of MCOCA are required to be strictly adhered to and followed and if that is not done the offence registered under MCOCA deserves to be quashed and set aside or the trial would vitiate. The judgment of the Full Bench in **Ashok Gyanchand Vohra** and the Division Bench of this Court in **Altaf Ismal Sheikh's** case were relied upon in support of the submission about the strict compliance of section 23(1)(a) by recording separate FIR after granting approval by the competent police officer is a basic requirement and it ought to have been complied with strictly in the present. Since we have held that the expression "no information shall be recorded" in section 23(1)(a) means no offence about the commission of an offence of organised crime under MCOCA on the basis of the information recorded earlier be "registered" without prior approval of the police officer not below the rank of the Joint Commissioner of Police, the judgments relied upon by the petitioner will not help the petitioner. In our opinion, the safeguard/filter provided for under clause (a) of sub-section (1) of Section 23 stand adhered to in the present case. In the circumstances, we have no hesitation in holding that no separate FIR needs to be

recorded by a police officer after the approval contemplated by section 23(1)(a) is granted by the Joint Commissioner of Police. The first question, accordingly, stands answered in negative.

21. That takes us to consider the next two questions together. Mr Mohite, learned counsel for the petitioner, invited our attention to the order of approval dated 25.7.2005 under section 23(1)(a) and the sanction accorded under section 23(2) dated 18.10.2005 and submitted that prior approval was sought and granted by the Joint Commissioner of Police in respect of DCB, CID C.R.No.86/2005 only and there was no reference in the order of approval to C.R. No.87/2005 or to any permission for clubbing C.R.No.87/2005 with C.R.No. 86/2005. He submitted that while granting sanction under section 23(2), the Commissioner of Police has wrongly granted approval in respect of both the C.Rs, which clearly demonstrates non-application of mind. The sanction dated 18.10.2005, Mr Mohite submitted, shows that the Commissioner has proceeded on the footing that on 25.7.2005 the approval for applying the MCOCA was granted by the Joint Commissioner of Police and the said authority has granted permission to club together C.R.No.87/2005 with C.R.No.86/2005. This further demonstrates non application of mind. Mr Mohite then submitted that in any case there is no provision either

under the Code or under MCOCA providing for clubbing of two separate offences together and then investigating both of them as single offence. Mr Mohite, submitted that even if it is assumed that clubbing of two offences is permissible, in the instant case, the order of clubbing was not passed by the competent police officer, namely, the Joint Commissioner of Police and on that count also the investigation and the sanction, both are illegal. Mr Mohite submitted that the police in the present case have given complete go-by to the mandate under section 23 and in view thereof the offence under MCOCA deserves to be quashed and set aside.

22. On the other hand, Mr Borulkar, learned Public Prosecutor, submitted that though technically two offences under the IPC have been clubbed by the investigating officer, the approval under section 23(1)(a) was granted about the commission of an offence of organised crime. The accused involved in both the offences are the members of one and the same organised crime syndicate. Once having the prior approval granted, it is open for the investigating officer in the course of investigation to club any other offence/s such as disclosed in the present case, namely, C.R.No.87/2005, with the main C.R in which the approval under section 23(1)(a) has been granted subject to further safeguard provided under section 23(2). The

Commissioner, while granting approval, has every right to examine papers and correct the wrong, if any, done by the investigating officer before granting sanction under section 23(b). He then submitted that though the order of clubbing was made by the Deputy Commissioner of Police, the Joint Commissioner of Police in his report, which was submitted to the Commissioner of Police for sanction under section 23(2), had made reference to the clubbing and, therefore, it cannot be said that the Commissioner of Police granted approval on the footing that the order of clubbing was also passed by the Joint Commissioner of Police. In the alternative, he submitted that there is no provision in MCOCA providing that even clubbing should be done only under the orders of the Joint Commissioner of Police. In short Mr Borulkar, submitted that clubbing cannot be said to be bad and illegal and on that ground the sanction granted under section 23(2) cannot be held to be illegal. Both the learned counsel relied upon the judgments to which we have already made reference in the foregoing paragraphs of the judgment in support of their contentions.

23. Clause (a) of subsection (1) of Section 23 of MCOCA provides first safeguard/filter under which no information about the commission of an offence of "organised crime" under this Act shall be recorded by a police officer without the "prior approval" of the

police officer not below the rank of the Deputy Inspector General of Police, that is, the Joint Commissioner of Police in the city of Mumbai. From bare perusal of this provision, one would find that the expressions "organised crime" and "prior approval" are of great significance, which demonstrate that no offence of "organised crime" under MCOCA could be "registered" without "prior approval" of the competent police officer. "Organised Crime" is defined under section 2(1)(e), which means any "continuing unlawful activity" by an individual, singly or jointly, either as a member of an "organised crime syndicate" or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. The expressions "continuing unlawful activity" and "organised crime syndicate" in the definition of "organised crime" are also defined under section 2(1)(d) and (f) respectively. "Continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an "organised crime syndicate" or on behalf of such syndicate in respect of which more than one chargesheets have been filed before a competent

court within the preceding period of ten years and that court has taken cognizance of such offence. "Organised Crime Syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.

24. A conjoint reading of all the three definitions clearly demonstrate that seeking prior approval of the competent police officer for recording information about the commission of an offence of "organised crime" under MCOCA is a condition precedent and it is mandatory in nature. It does not provide for the prior approval in relation to any single act of crime constituting an offence but the approval is in relation to "organised crime and continuing unlawful activity of organised crime syndicate". Merely because a police officer approaching the competent police officer seeking prior approval under section 23(1)(a) making reference to a particular crime does not mean that the prior approval pertains to only that crime. In our opinion, an act of making reference to only one crime is with a view to seek the approval for registering the commission of an offence of "organised crime" by a particular organised crime syndicate and in respect of continuing unlawful activity under MCOCA and to set the criminal law in motion and marks the commencement of investigation. In

the course of investigation if the investigating officer comes across any other offence of similar nature or which, in the opinion of the investigating officer, also constitutes an offence of "organised crime" under MCOCA and if it is committed by the very same organised crime syndicate, we find no reason as to why he cannot make it a part of the same offence of "organised crime" to which the prior approval has been granted. We do not find any provision in MCOCA which prohibits or put any fetter on the powers of the investigating officer from doing so. No separate approval under section 23(1)(a) to every such offence is necessary. The investigating officer under section 23(1)(a), in our opinion, has every right to investigate an offence of organised crime of the organised crime syndicate and not only an offence in relation to which the prior approval has been granted. In other words, once having granted the approval the investigating officer after recording/registering an offence under MCOCA has every right, in the course of investigation, to club any other offence committed by the same organised crime syndicate disclosing the offence of organised crime under MCOCA. With every new offence of organised crime, being disclosed after the approval is accorded in connection with a particular crime, there need not be a fresh procedure for a police officer to follow starting with fresh approval in relation thereof. In our opinion, once the approval is

granted, until the stage of seeking sanction reaches, there is no prohibition or fetter on the powers of such investigating officer to club other offence/s committed by the very same organised crime syndicate and which, in the opinion of the investigating agency, is a part of organised crime, namely, continuing unlawful activity of the very same organised crime syndicate.

25. In short, on receipt of an "information" about the commission of an offence of organised crime under MCOCA or having realised in the course of investigation of the offence registered under ordinary law, that the provisions of MCOCA are attracted a police officer can seek approval under section 23(1)(a) of the police officer not below the rank of the Deputy Inspector General of Police. Then the competent police officer under section 23(1)(b) has to investigate not merely the offence/crime registered for which the approval has been sought but also other offences/crimes found to have been committed in the course of investigation by the same "organised crime syndicate" as a part of their "continuing unlawful activity". Such offence/s could be clubbed and treated as one single offence of "organised crime" under MCOCA. No separate approval under section 23(1)(a) is necessary in such a situation to either club or investigate such offences and try them as one single offence under MCOCA after seeking sanction under section

23(2). The last filter, that is, according a sanction under section 23(2) is sufficient enough to take care of any wrong or illegality committed by the investigating officer in the course of investigation.

26. In the present case, the approval was granted on the basis of the facts and evidence on record after having found that the accused persons arrested in C.R.No.86/2005 as well as the accused persons wanted in that case are the active members of the organised crime syndicate led by Chhota Rajan. The Joint Commissioner of Police in the order dated 25.7.2005 seems to have recorded his satisfaction that more than one chargesheets have been filed against the members of the organised crime syndicate headed by Chhota Rajan during the last ten years and the respective courts have taken cognizances of the said cases and the crime committed in the present case,DCB CID C.R.No.86/2005 amounts to an organised crime committed by the members of organised crime syndicate as defined in section 2 of MCOCA. It is true that the approval was granted in relation to DCB, CID C.R.No.86/2005 for recording/registering an offence of organised crime committed by the members of organised crime syndicate headed by Chhota Rajan. However, this approval, in our opinion, cannot restrict the powers of the investigating officer to investigate only DCB CID C.R.No.86/2005. In the present case, the investigating

officer clubbed C.R.No.87/2005 with the permission of the Deputy Commissioner of Police, to which the Joint Commissioner of Police while submitting his report to the Commissioner of Police seeking sanction under section 23(2) made clear reference in the report. We find no illegality in this course adopted by the investigating officer, apart from the fact that no prejudice whatsoever has been caused to the accused persons. In the circumstances, the submissions of Mr Mohite on both these questions deserves to be rejected. In the circumstances, the judgments relied upon by Mr Mohite are of no avail to the petitioner in view of the view taken by us that all the safeguards provided for in section 23 of MCOCA have been strictly adhered to by the investigating authority. The second question formulated by us in the first paragraph, accordingly, stands answered in the affirmative and the third question in the negative.

27. In the result, the writ petition fails and dismissed as such.

(Smt.Ranjana Desai, J.)

(D.B.Bhosale, J.)

HIGH COURT
CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.147 OF 2007

Date of Judgment:

30th April, 2007

For approval and signature

THE HON'BLE SMT JUSTICE RANJANA DESAI.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?